

USSN 10/803,168 to Siegel et al.
For: Bench Top Grill Assembly (Ceramic) – Art Unit: 3749

REMARKS

This communication is in response to the Examiner's non-final Office Action of October 14, 2005. The Examiner's comments in that Action have been carefully considered.

Applicant respectfully requests a one-month extension of time to extend the due date for response in this matter from January 14, 2006, to February 14, 2006. A check in the amount of \$380.00 is enclosed to cover the following fees:

A one-month Large Entity extension fee (\$120.00).

Two Terminal Disclaimer fees (\$130.00 + \$130.00).

If this amount is not insufficient, please charge any remainder due to our account no. 10-0100.

Claims 1-45 have been rejected under the doctrine of obvious-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6,701,912, assigned to the assignee of the subject patent application. Claims 1-45 have similarly been provisionally rejected as being unpatentable over claims 14-31 of co-pending Patent Application No. 10/794,978. While the Examiner has conceded that the conflicting claims are not identical, he believes that they are not patentably distinct from each other.

In order to address both rejections under the obviousness-type double patenting rule, applicant herewith submits two Terminal Disclaimers. If co-pending Patent Application No. 10/794,798 issues as a patent, applicant agrees that any patent to issue on the subject application

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will expire at the same time as the patent issuing from Serial No. 10/794,978, or at the expiration date of U.S. Patent No. 6,701,912, whichever is earlier.

Claims 1-45 have also been rejected as being obvious and therefore unpatentable on the basis of U.S. Patent No. 6,786,140 issued to Lazaroff in view of or when combined with U.S. Patent No. 5,558,140 to Jenkins. The Lazaroff patent similarly issued to the same assignee as the assignee of the subject application. This rejection is respectfully traversed for the reason that the primary reference on which the Examiner relies, namely Lazaroff, was filed on June 30, 2003, which is the earliest effective date for which that patent can be used as a reference. However, the subject application is a continuation of U.S. Application Serial No. 10/428,621, filed on May 2, 2003, now issued as U.S. Patent No. 6,701,912. As the subject application is entitled to the effective filing date of May 2, 2003, preceding the earliest effective date of the Lazaroff, it is respectfully maintained that Lazaroff et al. cannot be validly used as a reference to reject the subject application.

During a telephone conference with Examiner Alfred Basichas on February 13, 2006, these dates were discussed with Examiner Basichas and he agreed that Lazaroff et al. is not a valid reference.

As the primary reference relied upon in paragraph 7 of the Office Action cannot be used as a reference in this case, it is respectfully submitted that the rejection set forth in the Office Action cannot constitute a prima facie obviousness-type rejection of any of the claims. Withdrawal of these rejections is, accordingly, respectfully requested.

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The Examiner's time and courtesy during the telephone conference is appreciated.

This application is now believed to be in condition for allowance. Early allowance and issuance is, accordingly, respectfully solicited.

Applicant hereby petitions that any and all extensions of time of the term necessary to render this response timely be granted. COSTS FOR SUCH EXTENSION(S) AND/OR ANY OTHER FEE DUE WITH THIS FEE DUE WITH THIS PAPER THAT ARE NOT FULLY COVERED BY AN ENCLOSED CHECK MAY BE CHARGED TO DEPOSIT ACCOUNT #10-0100.

Date: **Feb. 14, 2006**

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MG/as

Respectfully submitted,

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